

July 2023

Fact sheet for small-scale title applicants

Complying with legal obligations to notify landholders

This document provides general guidance about your requirements to notify landholders when you want a mineral claim or opal prospecting licence in the Lightning Ridge or White Cliffs Mineral Claims Districts. The information in this fact sheet is not intended to provide legal advice.

To meet your legal obligations to notify landholders, refer to the tables below that summarise the notice requirements. Once you have identified the notice/s you need to serve, you need to undertake reasonable steps to identify the landholder/s.

The tables below summarise the notice you need to give when you apply:

1. for a mineral claim
2. for an opal prospecting licence
3. to renew a mineral claim, and
4. to transfer a mineral claim.

1. Apply for a mineral claim (notice 1: before applying)

Notices that must be served on landholder/s	Notice of intention to apply for a mineral claim (s.177 notice)
What does the notice need to include?	You must use these forms for the s.177 notice: <ul style="list-style-type: none"> • Lightning Ridge: <u>LR 21</u> • White Cliffs: <u>WC 21</u>
When do I need to serve the notice?	Before lodging your application for a mineral claim. You need to serve this notice on the landholder/s to be able to apply for a mineral claim. Your application for a mineral claim must include a copy of the notice and a statement that you served the notice as required.
How do I serve the notice?	You must serve the s.177 notice in accordance with s.383 of the Mining Act. For guidance about how to give the notice to landholder/s, see Table 2 at the end of this fact sheet.

Apply for a mineral claim (notice 2: once you have applied)

Notices that must be served on landholder/s	Notice of intention to exercise rights under the small-scale title (s.266(4)(b) notice)
What does the notice	You must use these forms for the s.266 notice: <ul style="list-style-type: none"> • Lightning Ridge: <u>LR23</u>

1. Apply for a mineral claim (notice 1: before applying)

need to include?	<ul style="list-style-type: none"> White Cliffs: WC23 <p>The notice must state your intention to exercise rights under the mineral claim.</p> <p>The notice must also include a map (this can be the same map as used for the LR21 notice) that identifies the land to which your application relates.</p>
When do I need to serve the notice?	After applying for a mineral claim, as your application needs to be pended and assigned a mineral claim number, but before it is granted.
How do I serve the notice?	<p>The notice and map must be sent by registered post to the landholder/s.</p> <p>Keep a copy of the notice and evidence of it being posted, i.e. registered post receipt and/or stamped envelope to prove that the notice and map was posted.</p>

2. Apply for an opal prospecting licence

Notices that must be served on landholder/s	Notice of your intention to exercise rights under the small-scale title (s.266(4)(b) notice)
What does the notice need to include?	<p>You must use these forms for the s.266 notice:</p> <ul style="list-style-type: none"> Lightning Ridge: LR23 White Cliffs: WC23 <p>The notice must state your intention to exercise rights under the opal prospecting licence.</p> <p>The notice must also include a map identifying the land to which your opal prospecting licence application relates.</p>
When do I need to serve the notice?	Before your opal prospecting licence is granted.
How do I serve the notice?	<p>The notice and map must be sent by registered post to the landholder/s.</p> <p>Keep a copy of the notice and evidence of it being posted, i.e. registered post receipt and/or stamped envelope to prove that the notice and map was posted.</p>

3. Apply to renew a mineral claim

Notices that must be served on landholder/s	Notice of intention to exercise rights under the small-scale title (s.266(4)(b) notice)
What does the notice need to include?	<p>You must use these forms for the s.266 notice:</p> <ul style="list-style-type: none"> Lightning Ridge: LR23 White Cliffs: WC23 <p>The notice must state your intention to exercise rights under the mineral claim.</p>

3. Apply to renew a mineral claim

	The notice must also include a map (this can be the map provided to you by MEG) which identifies the land to which your mineral claim renewal application relates.
When do I need to serve the notice?	Encouraged to send before you apply for renewal, must be done your renewal can be granted.
How do I serve the notice?	The notice and map must be sent by registered post to the landholder/s. Keep a copy of the notice and evidence of it being posted , i.e. registered post receipt and/or stamped envelope to prove that the notice and map was posted.

4. Apply to transfer a mineral claim

Notices that must be served on landholder/s	Notice of your intention to apply to transfer a mineral claim (s.200(2A) notice)
What does the notice need to include?	You must use these forms for the s.200(2A) notice: <ul style="list-style-type: none"> • Lightning Ridge: LR22 • White Cliffs: WC22
When do I need to serve the notice?	Before applying to transfer the mineral claim
How do I serve the notice?	In accordance with s.383 of the Mining Act. For guidance about how to give the notice to landholder/s, see Table 2 .

Identifying the landholder/s

You need to determine who is a landholder for the land subject to your application. In some circumstances, there could be more than one landholder. If that is the case, you must serve each landholder. The term **landholder** is defined in the Mining Act as set out in **Appendix A**.

If the land is an exempted area, such as Crown land reserved for a public purpose, the landholder will be the person/s having the control and management of the land such as an appointed Crown Land Manager. The term exempted area is defined in the Mining Act and set out in Appendix A.

If the land is not an exempted area, there could be more than one landholder. For example, for a \ Western Lands Lease granted for a specified term, the holder of the lease may be a landholder, but if not on an exempted area Crown Lands (representing the Crown in right of the State of NSW) is also a landholder.

Note: For notices under s.266(4)(b), there could also be **secondary landholders**.

Steps to find the landholder/s contact details for serving notices.

1. Ask the department if they can give me a landholder's contact details for service

The department can provide the name and residential or business address details for service only where the landholder has given their approval for the department to share their details. If the landholder's consent has not been given to the department, you will need to find the landholder/s by other means.

Contact the Small-Scale Titles team on 02 6820 5200 or lightningridge.office@regional.nsw.gov.au for assistance.

2. Do your own searches to find the landholder/s contact details

There are several search options that may assist in finding landholder details. For example:

- You can obtain property details (Lot and DP) at: <https://maps.six.nsw.gov.au/>
- You can conduct title searches through an approved information broker or at: <https://infotrackgo.com.au/property/title-search/title-search-nsw> (fees apply). A Title Search will tell you:
 - the registered owner/s of the land
 - if there are other landholders identified in the Registrar-General's register/record
 - if land is subject to a Western Lands Lease. It will also specify the holder of the Western Lands Lease.
- There are searchable Native Title Registers on the National Native Title Tribunal website:
 - You can search to determine if there is a native title claim over the land subject to your mineral claim. The Register of Native Title Claims is available at: <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-Register-of-Native-Title-Claims.aspx> (Note: You can search by local government area)
 - You can search to determine if a native title determination has been made over the land subject to your mineral claim. The Register of Native Title Determinations is available at: <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-National-Native-Title-Register.aspx>

3. When you have searched but cannot find or identify the landholder

In the rare circumstance that you cannot find the contact details of a landholder in order to serve notice, the Mining Act has a way forward, depending on the type of notice you need to serve:

Section 177 notice

If you have made **diligent inquiries** and are unable to find or identify the landholder/s and you cannot find the person's place or residence or business, you can serve a s.177 notice by affixing it on some conspicuous part of the land (eg: front gate).

When you lodge your mineral claim application, you will need to show the inquiries you made to find the landholder/s.

Section 266 notice

If you have **taken all reasonable steps** to identify the landholder, but you have been unable to do so, the Secretary can decide to grant your mineral claim. Before the decision-maker will consider whether to approve your application, you will need to:

- a) provide evidence of the steps you have taken, and

b) show that there are no other reasonable steps you could have taken to identify the landholder.

Need help?

Contact the Small-Scale Titles team on 02 6820 5200 or lightningridge.office@regional.nsw.gov.au for assistance.

Table 2 Guidance about serving a notice under s.383 of the Mining Act

If the landowner is an individual (natural person)

You can choose one of the methods below:

- Give it to the person yourself, or
- leave it with a person at the landholder's home or place of business – ensuring the person appears to be at least 16 years old, or
- leave it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.
- post it duly stamped and addressed to the person at the residential or business address provided by the department, or
- post it duly stamped and addressed to the person at the place they indicated as an address to which correspondence may be posted, or
- send it by **email**, but only if the person has specified an email address for the service of notices, or
- send by another method of electronic communication, but only if the person has agreed to the service of documents by that method.

If the landowner is a body corporate

You can choose one of the methods below:

- Leave it with a person at a registered office of the body corporate – ensure the person appears to be at least 16 years old, or
- post it to a registered office of the body corporate, or
- post it duly stamped and addressed to the person at the place they indicated as an address to which correspondence may be posted, or
- leave it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person, or
- send it by email, but only if the body corporate has specified the email address for the service of notices, or
- send by another method of electronic communication, but only if the body corporate has agreed to the service of documents by that method.

If the landowner is the Crown

You must serve the notice by sending it to the head office or regional office of the government department or public authority responsible for the administration of the land.

If the landowner is an individual (natural person)

If the landowner is a Native Title Holder (s.383A Mining Act)

If there has not been an approved determination of native title

The notice can be served on any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and any registered native title claimants in relation to the land concerned.

If there has been a native title determination

Serve the notice on a registered native title body corporate in relation to the land concerned.

What if the landholder is not in NSW?

If the landholder is not in NSW, you can serve the notice by affixing it on some conspicuous part of the land (eg: front gate).

Note: If a person has more than one place of business, you can serve at any of those places.

If you require assistance or more information, please contact:

Mining, Exploration and Geoscience
Small-Scale Titles Team
Phone: +61 2 6820 5200
lightningridge.office@regional.nsw.gov.au

Appendix A, Definitions

Exempted area means an area constituted by land —

- (a) reserved, dedicated, appropriated, resumed or acquired for public purposes (except land reserved for a temporary common or a commonage), whether vested in the Crown or in any person as trustee for public purposes, or
- (b) held under a lease for water supply by virtue of a special lease or otherwise, or
- (c) transferred, granted or vested in trust by the Crown for the purpose of a race-course, cricket-ground, recreation reserve, park or permanent common or for any other public purpose, or
- (d) prescribed by the Regulations for the purposes of this definition.

Landholder means in relation to an exempted area, the controlling body of that land, or, in relation to any other land —

- (a) the owner of an estate in fee simple in the land, or
- (b) a native title holder of the land, or
- (c) the holder of a lease or licence under the *Crown Land Management Act 2016* over the land, or
- (d) the holder of a continued tenure within the meaning of Schedule 1 to the *Crown Land Management Act 2016*, or
- (e) the holder of a permissive occupancy granted over the land, or
- (f) (Repealed)
- (g) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, being —
 - (i) a mortgagee in possession of the land, or
 - (ii) a lessee of the land or other person entitled to an exclusive right of occupation of the land, or
 - (iii) a Minister or public authority having the benefit of a covenant affecting the land that is imposed by a Minister on behalf of the Crown under the *Crown Land Management Act 2016*, or
 - (iv) a Minister or public authority having an interest in the land under a conservation, natural heritage or biobanking agreement, or
- (v) a person prescribed by the Regulations for the purposes of this paragraph, or
- (g1) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, other than a person to whom paragraph (g) applies, but only in a provision of this Act in which a reference to a landholder is expressed to include a secondary landholder, or

Note — See s 255A, Part 13, s 383C.

- (h) a person of a class prescribed by or determined in accordance with the regulations to be landholders for the purposes of this definition, but does not include a person of a class prescribed as outside the scope of this definition.

© State of New South Wales through Regional NSW 2323. The information contained in this publication is based on knowledge and understanding at the time of writing (July 2023). However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Regional NSW or the user's independent adviser.